UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LINDA MARTINEZ,

PLAINTIFF,

Case No. 11 CV 0926 (NRB)

-AGAINST-

AMENDED COMPLAINT

ECF CASE

NEW YORK CITY, POLICE OFFICER BRIAN LITTLE, and SERGEANT DAVID REILLY, Individually, and as members of the New York City Police Department,

DEFENDANTS.

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PRELIMINARY STATEMENT

1. This is a civil action in which plaintiff, Ms. Linda Martinez, seeks relief for the violation of her rights secured by 42 USC 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and the laws and Constitution of the State of New York.
2. The claims arise from a July 11, 2010, incident in which officers of the New York City Police Department acting under color of state law, intentionally and willfully subjected Ms. Linda Martinez to, *inter alia*, false arrest and excessive force.
3. Plaintiff seeks monetary damages (special, compensatory and punitive) against defendants as an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

JURISDICTION

4. This action is brought pursuant to 28 USC 1331, 42 USC 1983, and the Fourth and Fourteenth Amendments to the United States Constitution.

5. Venue is laid within the United States District Court for the Southern District of New York in that Defendant City of New York is located within, and the events giving rise to the claim occurred within the boundaries of the Southern District of New York.

PARTIES

6. Plaintiff, Ms. Linda Martinez ("Ms. Martinez") is a citizen of the United States and at all times here relevant resided at 141 Attorney Street, Apartment 1A, New York, New York 10002.

7. The City of New York is a municipal corporation organized under the laws of the State of New York.

8. Police Officer Brian Little, Shield 07155, of the 7th Precinct ("PO Little"), and Sergeant David Reilly, Shield 04245, of the 7th Precinct ("Sergeant Reilly"), at all times here relevant were members of the New York City Police Department, and are sued in their individual and professional capacities.

9. At all times mentioned, defendants were acting under color of state law under color of the statues, ordinances, regulations, policies and customs and usages of the City of New York.

FACTUAL ALLEGATIONS

10. On or about July 11, 2010, at approximately 10:00 pm, Ms. Martinez was driving a car along Ludlow Street in Manhattan.

11. Ms. Martinez's boyfriend, Mr. George Rojas ("Mr. Rojas"), was a passenger in the car.

12. At the intersection of Ludlow Street and Stanton Street, Ms. Martinez stopped at a stop sign.

13. Ms. Martinez observed what appeared to be a New York City yellow cab stopped on Stanton Street at the intersection with Ludlow Street.

14. Ms. Martinez proceeded to drive through the intersection.

15. While she was in the intersection, the New York City yellow cab drove into the intersection and struck the passenger side of Ms. Martinez's car.

16. Ms. Martinez was shocked and stunned.

17. Ms. Martinez then heard a message from a loudspeaker coming from the car that appeared to be a New York City yellow cab.

18. The people in the car that appeared to be a New York City yellow cab ordered her to continue driving on Ludlow Street.

19. Ms. Martinez realized that the car that appeared to be a New York City yellow cab was an undercover police car.

20. Ms. Martinez complied with the order and continued to drive southbound on Ludlow Street.

21. The undercover police car, through its loudspeaker, ordered Ms. Martinez to stop opposite a park in a deserted area of Ludlow Street between Broome Street and Grand Street.

22. PO Little and Sergeant Reilly got out of the undercover police car and approached Ms. Martinez's car.

23. PO Little asked Ms. Martinez for her driver's license.
24. Ms. Martinez showed her driver's license to PO Little.
25. PO Little then told Ms. Martinez to exit the car.
26. PO Little told Ms. Martinez that she had run a red light and that the car she was driving was stolen.
27. PO Little then ordered Ms. Martinez out of the car.
28. Ms. Martinez got out of the car.
29. Once out of the car, PO Little threw Ms. Martinez against the hood of the car she was driving.
30. Ms. Martinez screamed.
31. PO Little then ordered Ms. Martinez to "Get in the fucking car and drive!"
32. Ms. Martinez said "Excuse me" to PO Little.
33. PO Little replied "Get in the fucking car bitch and drive!"
34. Ms. Martinez got in the car and drove off.
35. Ms. Martinez was not arrested or given a summons by PO little or Sergeant Reilly.
36. Ms. Martinez drove to see Mr. James Cordero ("Mr. Cordero") who owns the car that Ms. Martinez was driving.
37. Mr. Cordero encouraged Ms. Martinez to go to the police to report the incident.
38. Mr. Cordero accompanied Ms. Martinez and Mr. Rojas to the 7th Precinct.
39. Ms. Martinez, Mr. Cordero, and Mr. Rojas went to the 7th Precinct to file a complaint about the aforementioned incident.
40. While Ms. Martinez wrote the complaint, Mr. Rojas attempted to exit the 7th Precinct to smoke a cigarette.

41. As Mr. Rojas was exiting, PO Little and Sergeant Reilly entered the 7th Precinct.

42. PO Little and Sergeant Reilly recognized Mr. Rojas and Ms. Martinez.

43. PO Little grabbed and pushed Ms. Martinez against the wall and yelled at her "What's going on!"

44. PO Little then went to the front desk of the 7th Precinct and threw a piece of paper at Ms. Martinez and yelled at her "Bitch, tell the truth!"

45. Ms. Martinez and Mr. Rojas were then arrested without any legal justification or probable cause.

46. Ms. Martinez and Mr. Rojas were placed in a jail cell.

47. Mr. Cordero was also arrested and placed in a cell with Mr. Rojas.

48. While in the jail cell, Ms. Martinez began to have an asthma attack.

49. Ms. Martinez asked for medical assistance

50. PO Little entered the cell and threw a cup of water in Ms. Martinez's face and called her a "drunk bitch."

51. Ms. Martinez was placed in shackles and taken by ambulance to Bellevue Hospital.

52. On or about July 12, 2010, Ms. Martinez was taken to Manhattan Criminal Court and arraigned on the single charge of Falsely Reporting an Incident in the Third Degree, in violation of Penal Law § 240.50(3)(a).

53. Ms. Martinez was released on her own recognizance and her case was adjourned to September 22, 2010, in order for the prosecution to provide a supporting deposition for conversion of the criminal complaint to information.

54. On September 22, 2010, Ms. Martinez appeared in New York County Criminal Court.

55. Again the prosecution did not have the necessary supporting deposition to convert the criminal complaint to information, so Ms. Martinez's case was adjourned to December 1, 2010.

56. On December 1, 2010, Ms. Martinez again appeared in New York County Criminal Court.

57. Again the prosecution again did not have the necessary supporting deposition to convert the criminal complaint to information, so Ms. Martinez's case was dismissed pursuant to NY CPL 30.30 for a violation of Ms. Martinez's right to a speedy trial.

58. Ms. Martinez suffered damages as a result of her false arrest, including but not limited to: physical injuries, loss of freedom, loss of enjoyment of life, mental anguish, emotional distress, depression, sleep disturbance, shame, embarrassment, humiliation, and damage to her reputation.

FIRST CAUSE OF ACTION

(42 USC 1983 – Malicious Prosecution)

59. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

60. Defendants have deprived plaintiff of her rights pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, in that defendants maliciously prosecuted plaintiff.

61. The malicious prosecution was initiated and continued by the defendants, without legal justification and probable cause, and the defendants continued the prosecution with an improper purpose. The case terminated in favor of plaintiff.

62. Plaintiff has been damaged a result of defendants' actions in an amount believed to equal or exceed $250,000.00.

SECOND CAUSE OF ACTION

(42 USC 1983 – False Arrest)

63. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

64. Defendants have deprived plaintiff of her civil, constitutional and statutory rights under color of law and are liable to plaintiff under 42 USC 1983.

65. Defendants have deprived plaintiff of her right to be free of unreasonable searches and seizures, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, in that plaintiff was falsely arrested by the defendants.

66. The defendants confined plaintiff.

67. Plaintiff was aware of, and did not consent to, her confinement.

68. The confinement was not privileged.

69. Plaintiff has been damaged a result of defendants' actions in an amount believed to equal or exceed $250,000.00.

THIRD CAUSE OF ACTION

(42 USC 1983 – Excessive Force)

70. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

71. Defendants have deprived plaintiff of her civil, constitutional and statutory rights under color of law and are liable to plaintiff under 42 USC 1983.

72. Defendants have deprived plaintiff of her right to be free of unreasonable searches and seizures, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, in that defendants used excessive and unreasonable force in effecting the arrest of plaintiff.

73. Plaintiff has been damaged a result of defendants' actions in an amount believed to equal or exceed $250,000.00.

FOURTH CAUSE OF ACTION

(Constitutional Tort)

74. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

75. The defendants acting under color of law, violated plaintiff's rights pursuant to Sections 6 and 12 respectively of the New York State Constitution.

76. A damages remedy is necessary here to enforce the purposes of Sections 6 and 12 of the New York State Constitution, and ensure the full realization of plaintiff's rights under those sections.

77. Defendants have deprived plaintiff of her civil, constitutional and statutory rights and have conspired to deprive her of such rights and are liable to plaintiff under the New York State Constitution.

FIFTH CAUSE OF ACTION

(Retaliatory Prosecution)

78. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

79. Plaintiff exercised her First Amendment right to freedom of speech when making her complaint at the 7th Precinct.

80. In retaliation, plaintiff was arrested and prosecuted without any legal justification or probable cause.

81. Plaintiff has been damaged a result of defendants' actions in an amount believed to equal or exceed $250,000.00.

JURY DEMAND

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff respectfully requests that the court enter a Judgment against defendants together with costs and disbursements as follows:

In favor of plaintiff in an amount to be determined by a jury, but at least equal or exceeding $250,000.00, for each of plaintiff's causes of action;

Awarding plaintiff punitive damages in an amount to be determined by a jury;

Awarding plaintiff reasonable attorneys' fees, costs and disbursements of this action;

And such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 29, 2011

By: ______________________

Duncan Peterson (DP 7367)

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